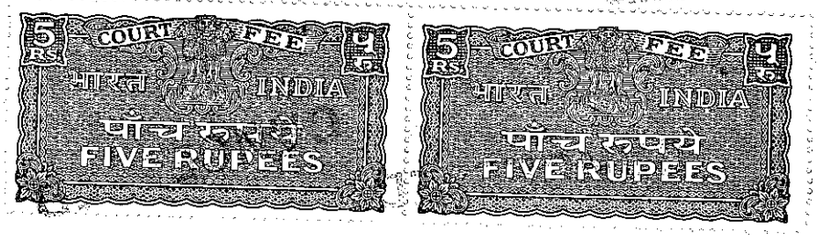
SINGLE BENCH (3)



C.A.H.P.

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition NO. 5062 **/2005**

PETITIONERS :1. Sardar Satpal Singh
Aged about 50 years, S/o. Late Sardar Vidayal Singh Babra

2. Sardar Iqbal Singh
Aged about 45 years, S/o. Late Sardar Vidayal Singh Babra

NON-APPLICANTS

3. Sardar Gurupal Singh
Aged about 42 years, S/o. Late Sardar Vidayal Singh Babra
All R/o. Church Road, Kedarpur, P.S. & Tahsil Ambikapur, Dist. Sarguja (C.G.)

R.R. No. 5136 Rajesh Tiwari
Presented on 30/11/05
dated

VERSUS

RESPONDENT : Jainath Shukla
Applicant
S/o. Shiv Bihari Shukla
Aged about 65 years
Occupation- Retd. Government Servant, R/o. Ambikapur,
Present Address Civil Lines Dongargarh, District Rajnandgaon (C.G.)

SALIMA RIZVI NOTARY SURGUJA R.N. 41/97/03 CHHATTISGARH

WRIT PETITION U/A 227 OF THE CONSTITUTION OF INDIA

Corrected

1. **PARTICULARS OF THE PETITIONERS**

As stated above in the cause title.

(33)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ……W.P.No.5062/05 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	21-10-2005 Shri A.K. Prasad, counsel for the petitioners. By the instant petition the petitioners have challenged the order dated 20th September 2005 passed by the Rent Controlling Authority, Ambikapur in R.C.C. No.5/B-121/2001-02 whereby the learned Rent Controlling Authority has allowed the application filed on behalf of the respondent herein to examine him on commission as a witness. I have heard Shri A.K. Prasad, learned counsel for the petitioners, on admission. Brief facts leading to filing of this writ petition are that respondent herein has filed an application under the Rent Control Act for eviction of the premises in occupation of the petitioners herein as a tenant of respondent herein on the ground of bonafide and personal necessity for the purpose of residence after his retirement from the government service. The said application has been resisted by the petitioners herein. An application under Order 26 Rule 1 of the C.P.C. was filed on behalf of the respondent herein to allow him to be examined on commission being an old and sick person. That application was also resisted by the petitioners herein. However, the learned Rent Controlling Authority has allowed the application vide impugned order.	

SP/FS/2005 - 20,000

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

सामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

The argument advanced by learned counsel for the petitioners is that since the respondent herein is residing out of the jurisdiction of the Rent Controlling Authority, the Rent Controlling Authority was not competent to pass the order under Order 26 Rule 1 of the C.P.C. Second ground raised by learned counsel for the petitioners is that no certificate and affidavit have been filed in support of the application.

Having heard learned counsel for the petitioners, I have perused the impugned order and the petition. Perusal of the records shows that the respondent herein is residing out of the jurisdiction of the learned Rent Controlling Authority, therefore, the provision of Rule 1 of Order 26 of the C.P.C. is not applicable in this case. However, under Rule 4 of Order 26 of C.P.C. the Rent Controlling Authority was entitled to pass the order for examination of the respondent herein on commission which envisages that:

"(1) Any Court may in any suit issue a commission (for the examination on interrogatories or otherwise of:-)

(a) any person resident beyond the local limits of its jurisdiction;

(b) any person who is about to leave such limits before the date on which he is required to be examined in Court; and

(c) [any person in the service of the Government] who cannot in the opinion of the Court, attend without detriment to the public service:

(36)

(35)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक WP 5062/05 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

[Provided that where, under Rule 19 of Order 16, a person cannot be ordered to attend the Court in person, a commission shall be issued for his examination if his evidence is considered necessary in the interests of justice:

Provided further that a commission for examination of such person on interrogatories shall not be issued unless the Court, for reasons to be recorded, thinks it necessary so to do.]

As far as filing of the medical certificate whereby the respondent herein has expressed his difficulty to come to the Court, perusal of Annexure-P/1 reveals that medical certificate of the registered medical practitioner was filed before the Rent Controlling Authority, therefore, argument of learned counsel for the petitioners that no medical certificate is filed is devoid of any merit. Learned Authority has observed that he is satisfied that the application is bonafide and the evidence of respondent herein is necessary in order to decide the issue and evidence of the respondent herein is material. There are reasonable grounds exist for the respondent herein for not coming to the Court. It has been mentioned that even though respondents herein is residing out of the jurisdiction of the Court, but looking to the illness and old age of the respondent herein it is necessary that the respondent herein should be examined on commission as per the provisions of Order 26 Rule 4 (1) (a) of the C.P.C.. Therefore, in view of the above facts, I do not find any ground

(36)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —4—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	to interfere with the impugned order by exercising extraordinary jurisdiction under Article 227 of the Constitution of India. At the most, the petitioners herein are entitled for the traveling expenses to the places where the respondent herein is to be examined and for that purpose, the Court has already fixed the date for arriving at the estimated expenses. In view of the above, I do not find any substance in this petition, same is liable to be dismissed and it is hereby dismissed. No costs. Consequently, M.(W.)P. No.4093/2005 and I.A. No.8873/2005 stand disposed of. **Sd/-** **L.C.Bhadoo** **Judge**	

Barve